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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,465

12/05/2003

Luis E. Luciani JR.

200314490-1

9421

22879 7590 04/12/2010

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EXAMINER

DINH, KHANH Q

ART UNIT

PAPER NUMBER

2451

MAIL DATE

DELIVERY MODE

04/12/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* LUIS E. LUCIANI, JR., DON DYKES, and  
CURTIS R. JONES

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Appeal 2010-001052  
Application 10/728,465  
Technology Center 2400

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Mailed: April 12, 2010

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 2, 2009. A Docketing Notice was mailed and Appeal Number 2010-001052 was assigned on November 18, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being

remanded to the Examiner. The matter requiring attention is identified below.

Claims 14-20 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, second paragraph. *See Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008); *Ex parte Rodriguez*, 92 USPQ2d 1395 (BPAI 2009). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled "Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph," located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf). Thus, there is a question as to whether claims 14-20, and the claims which depend upon these claims, meet the requirements of being definite under 35 U.S.C. § 112, second paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 14-20, and the claims which depend upon these claims, meet the requirements of 35 U.S.C. § 112, second paragraph.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

babc

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